

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

MELTON LEE MILLER

PLAINTIFF

v.

Case No. 4:15-cv-04095

DOCTOR MORGAN, *et al.*

DEFENDANTS

**ORDER**

Plaintiff, Melton Lee Miller, submitted this *pro se* action for filing on September 25, 2015. ECF No.1. Currently before the Court are Plaintiff's failure to follow the Court's orders and failure to prosecute this matter.

Plaintiff originally filed this case *pro se* on September 25, 2015. In his Complaint, Plaintiff claims his constitutional rights were violated when he was denied medical care while being housed at the Miller County Detention Center ("MCDC"). ECF No. 1. On the same day the Complaint was filed, Magistrate Judge Barry A. Bryant entered an Order directing Plaintiff to complete and return an *in forma pauperis* ("IFP") application or pay the full filing fee by October 19, 2015. Plaintiff was advised that failure to comply with this Order could result in the dismissal of his case. ECF No. 3.

On October 6, 2015, the Order sent to Plaintiff at the MCDC was returned to the Clerk of the Court as undeliverable mail. It was determined that Plaintiff had been transferred to the Arkansas Department of Correction–Ouachita River Unit ("ORU"). Thus, the September 25, 2015 Order was mailed to Plaintiff at the ORU. This mailing was not returned as undeliverable. Plaintiff failed to either respond with a completed IFP form or pay the full filing fee.

On October 27, 2015, Magistrate Judge Barry A. Bryant issued an Order directing Plaintiff to show cause by November 16, 2015, as to why he had failed to comply with the September 25, 2015 Order. Plaintiff was also advised that failure to respond to the Order to Show Cause may result in the dismissal of this case. ECF No. 7. Plaintiff has not responded to the Order to Show Cause, and it has not been returned as undeliverable mail. Further, Plaintiff has not communicated with the Court in any way since September 28, 2015. ECF No. 6.

While *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *See Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). Local Rule 5.5(c)(2) states in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds the plaintiff failed to prosecute or failed to comply with orders of the Court. *See* Fed. R. Civ. P. 41(b); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962) (the district court possess the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with *any* Court order.”

Plaintiff has failed to keep the Court apprised of his current address as required by Local Rule 5.5(c)(2). Plaintiff has failed to comply with the Court’s Order to Show Cause. Plaintiff has also

failed to prosecute this matter. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that this case should be and hereby is **DISMISSED WITHOUT PREJUDICE** for failure to comply with the Court's Local Rules and Orders and failure to prosecute this case. *See* Local Rule 5.5(c)(2); Fed. R. Civ. P. 41(b).

IT IS SO ORDERED, this 22nd day of February, 2016.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge